Reversing the Appellate Division, the New Jersey Supreme Court created an exception to the plain and unambiguous language of 42 U.S.C. §407, essentially on the equitable theory that if petitioner had been receiving his Social Security benefits as they fell due, the Essex County Welfare Board would not have had to pay full welfare benefits to the petitioner.

This Court granted a writ of certiorari on May 15, 1972.

ARGUMENT

I. THE PLAIN AND UNAMBIGUOUS LANGUAGE OF 42 U.S.C. §407 PROHIBITS ANY "EXECUTION, LEVY, ATTACHMENT, GARNISHMENT, OR OTHER LEGAL PROCESS" UPON ANY SOCIAL SECURITY BENEFITS BY ANY HOSTILE CLAIMANTS.

The meaning of 42 U.S.C. §407[2] is clear on its face. Indeed, its language is so absolute and non-controversial that this is the first reported case involving this issue to come before this Court since the passage of the Social Security Act in 1935. The trial court had no difficulty in arriving at the correct decision. It held:

> The intent of Congress is clear, namely to protect the recipient from the attack of creditors before and after the moneys are paid, and to permit him or his dependents to obtain the necessities of life. As long as the fund is not converted to a permanent investment, its mere deposit in a bank for use by the recipient does not expose it to attachment or levy

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[2] Section 407 provides a two-fold protective shield. It prohibits a Social Security recipient from "assigning or transferring" any rights to his insurance *before* actual receipt of his payments and it prohibits a hostile claimant from "levying or executing" upon the Social Security proceeds *after* actual receipt.

by creditors. 249 A.2d at 641 (County Court 1969) 104 N.J. Super. 284.

The finding was upheld in the Appellate Division of the New Jersey Superior Court. 109 N.J. Super. 48, 262 A.2d 227 (1970). The New Jersey Supreme Court later reversed this decision,[3] 59 N.J. 75, 279 A.2d 806 (1971) based on its belief that recovery of money "advanced" by the respondent to the petitioner would be just under the circumstances.[4]

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[3]The New Jersey Supreme Court's opinion devotes considerable space to discussion of two irrelevant points: (1) the relationship of federal and state disability benefit programs and (2) certain decisions under the Veteran's Administration Act. As pointed out in the text, the first of these essentially involves the question whether the state "ought to be entitled to recover benefits paid in the context of a state program, when federal payments are subsequently forthcoming. No one questions in this suit the validity or equity of such repayment. But that question simply cannot affect the decision whether to honor the explicit terms of a federal statute. Second, the Veterans Administration cases are inapposite because the wording of the exemption provisions as well as the purposes of the statutes differ, and because the factual situations of the cases under the Veteran's Administration were critically different: in each, the veteran involved was under a legal disability and *unable* to manage his own affairs, thereby necessitating the appointment of a guardian. Under such circumstances, the functioning of a statute prohibiting assignment of benefits or execution on those benefits by hospitals and others aiding the incompetent constitutes a question completely different from that in the present case.

[4]Footnote 2 as well as the precise holding of the New Jersey Supreme Court makes clear that its decision was based entirely on its appraisal of the justness of the underlying debt. In that footnote, the Court noted that the respondent's complaint asserted a right to the entire lump sum social security payment, but the Court reduces that claim to "admittedly overlapping payments to the extent of the amount of the federal benefits, as if they had been paid monthly during the duplicated period." As the Court's opinion makes clear, it thought that this was a fair resolution. However, there is no legal basis whatsoever for such a ruling. The New Jersey statute involved, N.J.S.A. 44:1-95, authorizes a county

There does not appear to be excessive information regarding §407 by way of legislative history. Persons participating in the drafting of this Section, however, recognized that "Congress intended the exemption of attachment in Social Security to be unqualified and absolute." See letter of Wilbur Cohen, dated June 22, 1972, Appendix A.

> It was generally understood, without any exception, that the idea of making a payment under the social security program would be a statutory right, and payment would not be subject to any other legal process whatsoever, except as provided specifically in the law.
>
> The impact of the depression of 1929-33 was uppermost in the minds of both the drafters of the legislation and the legislators. Many individuals had lost their savings, homes, business, pensions and other resources. The intent of Congress was to provide a very modest payment, but for that payment to be as certain as human institutions and statutory law could make it. The intent was to provide a guaranteed payment which would arrive each month without any possibility of intervention by any third party. This was the only way to overcome the uncertanties and difficulties which the depression had brought which resulted in so much unsatisfaction, humiliation, and financial difficulties for millions of persons who had counted on their economic security.

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welfare board to sue for reimbursement of *all* moneys it paid to a recipient if the recipient later acquires any assets, not just the proportion suggested by the New Jersey Supreme Court. New Jersey statutory law creates no distinction based on overlapping federal and state benefits, and there is no discussion in the New Jersey Supreme Court's opinion of how such a distinction can bear upon the relationship of N.J.S.A. 44:1-95 and the clear immunity from levy granted by 42 U.S.C. §407.

There is absolutely no question in my mind that the Congress intended the exemption of attachment in social security to be unqualified and absolute. *Id.*

Administrative interpretations of §407 by the Social Security Adminstration support the absolute immunity of Social Security benefits from legal process:

> *Transfer or Assignment.*—The Administration shall not certify, as provided in §404.968, any amount for payment to an assignee or transferee of the person entitled to such payment under the Act, nor shall the Administration certify such amount for payment to any person claiming such payment by virtue of an execution, levy, attachment, garnishment, or other legal process or by virtue of any bankruptcy or insolvency proceeding against or affecting the person entitled to the payment under the Act, 20 C.F.R. § 404.970 (July 1968).

This position was reaffirmed by the United States in the Memorandum as *Amicus Curiae* at the time Wilkes filed his Petition for a Writ of Certioriari.[5]

Aside from the policy question presented, the Welfare Board concedes the unambiguous meaning of §407 as well.

Section §407 establishes a clear, unambiguous policy of Congress that Social Security benefits are to go to the recipient unobstructed and to accrue to his benefit, not to the benefit of his creditors. The purposes of the exemption—to assure the support and security of the recipient; to allow him to manage his own affairs with

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[5] "The United States believes that the unqualified prohibition of Section 207 should not be subject to exceptions based on equitable considerations and therefore that the decision of the Supreme Court of New Jersey is erroneous. Section 207 is designed to assure that the full amount of disability benefits paid will be available for the use of the beneficiary: the decision of the Supreme Court of New Jersey to some extent weakens this protection," at p. 3.

independence and dignity; and to prevent the creation of poorhouses—would be totally frustrated by permitting the invasion of the protected funds involved here.[6] For the Court to allow this decision to stand would allow a state court to advance the interests of its own state treasury at the expense of a clearly stated Congressional policy.

Petitioner submits that this Court's task is clear. The intention of Congress may be ascertained from the explicit language used in the statute. Where the language of the statute is plain and unambiguous, as in this case, there is no occasion for construction, and the statute must be given effect according to its plain and obvious meaning. *Ex Parte Collett*, 337 U.S. 55 (1949).

II. THERE IS NO EXCEPTION TO THE ABSOLUTE AND UNQUALIFIED IMMUNITY OF SOCIAL SECURITY BENEFITS UNDER §407.

This Court cannot read exceptions into legislation where no exceptions were intended. Nor can it engraft artificial distinctions into a statute that is clear on its face for the purpose of achieving a particular policy result,[7] no matter how laudable that purpose might be.[8]

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[6]The facts of this case demonstrate the need for the protection conferred on social security benefits by Section 407. Here the Board indiscriminately attached the petitioner's entire social security check, even though the courts of New Jersey have found that the Board is not entitled to the entire amount.

[7]*See Hilton v. Sullivan*, 334 U.S. 323, 339 (1947) wherein the Court held that a question pertaining to the wisdom of a policy embodied in a Congressional enactment is not for the Court to determine.

[8]One writer who has given the question of recovery considerable thought, has reached the following conclusions:

> The Nixon Administration has recommended that Congress prohibit all recoveries in the federally-funded cash assistance programs. Similar proposals have been made in several state capitals. This study supports the wisdom of these recom-

Social Security benefits have survived since their birth in 1935 without comprising the integrity of their absolute immunity from legal process.

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mendations and suggests that they should be extended to prohibit all recovery in MA and GA. It is also recommended that if Congress adopts a new method of welfare financing, with federal funds providing a minimum income in the cash assistance programs, federal law should prohibit recovery of all supplemental payments made by the states.

Recovery may have been, a justifiable policy in the Nineteenth Century when deterrence was a major objective or even before 1956, when rehabilitation became a national welfare goal. But today, the social costs produced by recovery cannot be justified by the small budgetary savings which amount to less than 1% of the annual sum spent on welfare. Even in the context of a single state or program, the savings are not significant, and the two methods required to make the process more than a nickel and dime operation—real estate liens and lump sum recoveries—drastically escalate the social costs.

The evidence indicates that the overall cost-effectiveness ratio of recovery will become even more unfavorable in the decades ahead. The long-term trend of declining "profits" from recovery is likely to continue, particularly in the Northern states where most recovery activity is now concentrated. At the same time, social costs will grow as the nation increases its commitment not only to rehabilitate those with the capacity to become self-supporting, but also to ameliorate the condition of the aged and the disabled for whom rehabilitation is not feasible.

This is not to say that all of the social welfare arguments advanced in support of present recovery practices are completely without merit. The "double benefit" theory used to justify lump sum recoveries is persuasive. Nevertheless, it is believed that the social costs produced by recoveries before death are greater than the inequities the "double benefit" theory is intended to prevent. Similarly, the objective of encouraging people to find alternatives short of welfare is desirable, but the justification overlooks the actual impact of deterrence on the lives of those deterred. The rest of the social welfare arguments in support of recovery either ignore substantial social costs, turn on mistaken factual assumptions or rest on unacceptable poor law judgments about the poor and the proper function of a welfare system.

The consideration which should resolve all doubts about recovery is the unfairness of requiring the welfare poor to

Millions of people receive Social Security benefits–from APTD (Aid to Persons with Permanent and Total Disabilities) to OAA (Old Age Assistance) all of which are, in effect, earned insurance benefits determined by the length of time a person worked and paid Social Security taxes. In all of these programs, Congress has declared that the moneys received were to benefit the recipient–not his creditors. Such a policy in no way depends upon the identity of the creditor (e.g. government or non-government) or the validity or justness of the underlying debt. If courts are to be allowed to create exceptions on the basis of their appraisal of the equities of the situation (see 279 A.2d 811 of the New Jersey Supreme Court's opinion), the Congressional policy designed to benefit the millions of Social Security recipients will be jeopardized.

Further, if this Court does create an "exception" to the explicit language of §407, what standards will it establish? Would the "exception" pertain only to welfare recovery schemes, or will other governmental units, federal and local, demand equal consideration as well? Lastly, is there an accurate measuring stick to determine which non-governmental claimants are voluntary or involuntary creditors?[9]

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repay while billions of dollars in subsidy are paid unconditionally each year to corporations and individuals far better able to repay than welfare recipients and their families. (Citations Omitted)

Baldus, David C. "Welfare Is A Loan: The Recovery of Public Assistance in the United States," 24 Stanford Law Review–(June, 1972).

[9]For example, is a private hospital which admits and treats a person on Social Security who is ill, a voluntary or involuntary claimant under the distinction the respondent wishes this Court to create? Would such a court rule be the first step in sweeping away the security elderly persons have enjoyed until now regarding the immunity of their Social Security benefits from attack.

If this one "exception" is created, applications for others will surely follow, and litigation involving §407 will multiply, permeating both federal and state courts at all levels. Each special interest, government and non-government, voluntary and involuntary, can be expected to fight for its own "exception" to the Act. Moreover, arising out of the morass of any judicially created "exception" to the express language of a statute is always the possibility that standards applied for the exception may be as arbitrary as the "exception" itself.[10]

This Court has re-emphasized the sound view that it may not legislate:

> We do not decide today that the [state law] is wise, that it best fulfills the relevant social and economic objectives that [the State] might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. . . . [T]he Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients. *Jefferson v. Hackney* 40 L.W. at 4590 (Decided May 30, 1972), citing *Dandridge v. Williams*, 397 U.S. at 487. See also the dissent in *Furman v. Georgia*, 40 L.W. at 4968 (June 29, 1972) wherein four Justices expressed the opinion that the Court's "traditional deference to the legislative judgment must [not] be abandoned."

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[10] A further consideration is the thought that most persons receiving social security are not in a position to engage in protracted litigation. Many cannot afford lawyers, the time involved nor the luxury of tying up their needed Social Security benefits.

It is for the same reason expressed in these cases that this Court cannot second-guess Congress over the unequivocal meaning of Section 407.

Petitioner Wilkes concurs in the view of Mr. Justice Rehnquist who stated that the Court "cannot accept appellants' invitation to change this long-standing statutory scheme simply for policy considerations reason of which we are not the final arbiter." *Id.*

In short, the Welfare Board is no different than any other hostile claimant. As the trial court observed,

> Although the claim of the Essex County Welfare Board serves as a valid social purpose in enforcing the policy of repayment espoused by the New Jersey Legislature, I am unable to find in the federal statute or the cases interpreting the same any sound basis for concluding that the board is not a creditor subject to the same limitation as other creditors. The distinction made by other courts between "voluntary" and "involuntary" creditors is an artificial one which has no support in the pertinent legislation. There would appear to be no logical basis for treating the board any differently from any other person or organization who advanced moneys to the indigent individual for his personal needs" 104 N.J. Super. at 288, 249 A.2d at 643.

Pursuing this logic, the court correctly held,

> If a relative or a neighborhood grocer or a charitable institution who advanced funds or credit for the maintenance and support of an individual would be barred from recovery out of the federal funds, why should a welfare board be in any better position? The mere coincidence that the claimant is a public body cannot dictate a contrary result. In the absence of any exception in the statute demonstrating such an intent, the will of Congress must be enforced. *Id.*

Since the New Jersey Statute[11] granting reimbursement to county welfare boards conflicts with §407, the former must yield to paramount federal law so as to afford and retain the exemption of Social Security benefits from attachment, execution or other legal process. U.S. Constitution, Art. VI, cl.2; *Sola Electric Co. v. Jefferson Electric Co.*, 317 U.S. 173 (1942); *Hill v. State of Florida ex rel. Watson*, 325 U.S. 538 (1945).

CONCLUSION

For the reasons stated above, this Court should reverse the judgment and opinion of the Supreme Court of New Jersey.

Respectfully submitted,

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[11] N.J.S.A. 44:7-14; N.J.S.A. 44:1-95.

APPENDIX "A"

THE UNIVERSITY OF MICHIGAN
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June 22, 1972

Mr. Paul Aiken
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Manchester, New Hampshire

Sir:

You have asked for my understanding of the legislative history of section 207 of the Social Security Act relating to the exemption of social security benefits from attachment and "other legal process."

I was a member of the staff of the President's Committee on Economic Security in 1934-35 responsible for following the legislative activity of the bill through the Congress.

It was generally understood, without any exception, that the idea of making a payment under the social security program would be a statutory right, and payment would not be subject to any other legal process whatsoever, except as provided specifically in the law.

The impact of the depression of 1929-33 was uppermost in the minds of both the drafters of the legislation and the legislators. Many individual had lost their savings, homes, business, pensions and other resources. The intent of Congress was to provide a very modest payment, but for that payment to be as certain as human institutions

and statutory law could make it. The intent was to provide a guaranteed payment which would arrive each month without any possibility of intervention by any third party. This was the only way to overcome the uncertainties and difficulties which the depression had brought which resulted in so much unsatisfaction, humiliation, and financial difficulties for millions of persons who had counted on their economic security.

There is absolutely no question in my mind that the Congress intended the exemption of attachment in social security to be unqualified and absolute.

Sincerely,

/s/ Wilbur J. Cohen
Dean

WJC/as